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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 85.

IDONAH SLADE PERKINS, *Petitioner,*

v.

BENGUET CONSOLIDATED MINING COMPANY, *Respondent.*

BRIEF FOR THE RESPONDENT.

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BRIEF FOR THE RESPONDENT.

JURISDICTION.

Jurisdiction seems to be properly invoked by the Petitioner under the provisions of Section 1157(3) of Title 28 of the United States Code.

THE QUESTION PRESENTED.

The question presented is—

May the State of Ohio, by its statutes or by a judicial interpretation of its statutes, properly refuse to recognize as valid a service of process made in an action *in personam* brought in the Courts of that State against a foreign corporation to enforce a cause of action not arising in the State

and in no way related to the business or activities of the foreign corporation in the State, *if* that corporation has not appointed a statutory agent on whom process may be served in the State, or *if* that corporation has not otherwise consented to service of summons upon it in actions brought in the State.

STATUTES INVOLVED.

Petitioner correctly refers to Sections 11,276 and 11,290 of the Ohio General Code as being the Statutes involved.

Section 11,276 is the "venue" statute, which is to say, the statute which prescribes the county in which a cause of action may be brought. From the quotation of the statute which appears on Page 3 of Petitioner's Brief, it will be brought "in any county in which there is property of, or debts owing to, the defendant", which is the usual and customary statute allowing suits in attachment or by way of garnishment to be brought in the county where the property or debts of the foreign corporation might be. The statute then goes on to provide that the suit may be brought in the county where the defendant is "found" or where the cause of action or some part thereof arose. Under this venue statute, Petitioner could have brought suit in Clermont County by way of attachment, as she did, for a judgment *in rem* against the property which Petitioner states Benguet had in Clermont County, Ohio, although, of course, such a suit could not have been brought in Clermont County as to the deposits in the First National Bank of Cincinnati, Cincinnati being in Hamilton County, Ohio. Also, Petitioner could have brought suit in Clermont County, Ohio, if Benguet were there "found" or if the cause of action arose there.

Section 11,290 is the statute governing service of process in the State of Ohio, no matter in what county suit is brought under the permission of Section 11,276. This statute provides that when the defendant is a foreign cor-

poration, having a managing agent in this State, the service may be upon such agent.

STATEMENT OF THE CASE.

The record facts before the Ohio Supreme Court when it rendered its decision and judgment were these—

Respondent, hereinafter referred to as "Benguet", is a Philippine gold mining company. It has conducted its business, mining operations, solely in the Philippines from 1903, when it was organized, to date. In December, 1941, the Japanese took control of the mines and were not driven out until about December of 1945. In driving them out, our United States forces completely demolished Benguet's surface buildings at the mines, and at the end of 1945, for lack of attention, the mine tunnels were in a state of collapse. In 1947, when the suits were filed, Benguet had not resumed its mining operations; it was rebuilding its physical plant in the Philippines and cleaning out the mine tunnels. Benguet had no office or place of business and no mining operations in the United States or elsewhere than in the Philippines at the time suits were brought or theretofore.

Petitioner, a resident of Norwalk, Connecticut, but a resident of the Philippines beginning with her marriage there in January of 1914, until she left the Philippines in 1933, claiming ownership of stock in Benguet purchased in the Philippines prior to 1930, brought two actions in the Court of Common Pleas of Clermont County, Ohio, in April of 1947, against Benguet, joining as defendants John W. Haussermann, its President and General Manager, and the New Richmond National Bank of New Richmond, Ohio. One action was by way of attachment and sought recovery of $68,400.00 for cash dividends declared by Benguet in 1940 and 1941; and the other action sought $2,500,000.00 in damages for wrongful withholding of the stock which Petitioner claims she owns.

Attempted service of summons on Benguet for a judgment *in personam* was made in each case on John W. Haussermann in the style designated by Petitioner, i.e., as: "President, General Manager, controlling member and duly authorized representative of said company in the United States and State of Ohio". Summons was also served on John W. Haussermann individually and on the New Richmond National Bank.

Benguet, under a special appearance, moved to quash and set aside the attempted service; and the lower Court found as facts, and accordingly entered its judgments (R. p. 14, 21)—

> "2. That John W. Haussermann, upon whom summons was attempted to be served, was not the managing agent of the Defendant, Benguet Consolidated Mining Company, within the meaning of the Ohio statute governing service of process on foreign corporations.
>
> "3. That the Defendant, Benguet Consolidated Mining Company, was not doing business in Ohio in such a sense or in such manner as to authorize a valid service of summons on it under the laws of the State of Ohio; and *that it had no business within Ohio requiring an agent in Ohio to manage and conduct the same.*"

The facts of record before the lower Court on which its findings and judgment were based, in addition to those set out above, were that John W. Haussermann, Benguet's President and General Manager, had been a resident of the Philippines continuously since 1898; that he organized Benguet in 1903 and had been connected with the affairs of Benguet from that time to date of the actions; that in May of 1941, he came to the United States to attend to personal and family matters with reservations to return to the Philippines in September of 1941; that when the time came for his return, the clouds of war were gathering and the United States Government took over the steamship on which he was to return to the Philippines and denied him transportation; that his later reservations for October and

November of 1941 were similarly denied him, and before he could use his December 1941 reservations, the treachery of Pearl Harbor occurred, making it impossible for him to return to the Philippines (R. p. 129).

The facts of record further were that in about 1906, John W. Haussermann acquired from his brothers and sisters, the home farm at New Richmond, Ohio, where he was born; that thereafter he maintained the farm and would make his home there when he came to the United States from the Philippines on vacations; that after the Japanese war began, he made his home at this farm, in New Richmond, Ohio, but that from that time to the date of the suits, less than half of his time was there spent.

The facts of record further were that when the Japanese were finally driven out of the Philippines in or about December of 1945, John W. Haussermann began continuous efforts to obtain suitable reservations to return to the Philippines, and that he was finally able to procure such reservations in January of 1947 for the sailing of August 29 (R. p. 131-2).

The record facts further were that beginning in March of 1946, Benguet, through its staff in the Philippines and a purchasing agent acting for it in San Francisco, began purchasing machinery, supplies and equipment in the United States for the purpose of resuming Benguet's mining operations in the Philippines, none of which machinery, supplies and equipment were purchased in the State of Ohio or from Ohio concerns; and none of which were purchased by John W. Haussermann, the Company's President and General Manager, because he knew nothing of this phase of Benguet's operations (R. p. 156, 169, 177). At times, the suppliers of the machinery, supplies and equipment insisted on the formal orders for the same being signed by a company official and, accordingly, after the purchasing agent had negotiated for and purchased the items on instructions from the Benguet staff in the Philippines, and because John W. Haussermann was the only official of Benguet in the

United States, the purchasing agent would prepare the formal orders for the same and send them to John W. Haussermann for signature, which signing was done sometimes in New York, sometimes in Washington, sometimes in Chicago, sometimes on the West Coast, and sometimes in Ohio, and the signing of the checks on the bank accounts in Ohio in payment of these supplies was also done by John W. Haussermann, wherever he might be, the checks being drawn in the amount and to the order as directed by the Company's Chief of Staff in Manila and by the purchasing agent in San Francisco.

The record facts further were that immediately after the war, two or three out of nine meetings of the Board of Directors of Benguet were held at John W. Haussermann's home in New Richmond, Ohio, the others having been held at Washington, New York, San Francisco, and otherwise than at New Richmond, Ohio; that pre-war, all of the Directors lived in the Philippines; that during the war three out of five Directors of Benguet were interned in the Philippines by the Japanese; that in May of 1945, John W. Haussermann, Jr., son of John W. Haussermann, was elected a Director to replace a Director who had been killed by the Japanese in December of 1944; that in May of 1945, one of the Directors returned to the United States from internment by the Japanese and made her home in Kansas; that at the time of suit, contrary to what Petitioner states in her Brief, at page 14, to the effect that the Directors of Benguet were in the jurisdiction of the Ohio Court, one Director was still in the Philippines, another Director lived in New York, another Director, mentioned above, lived in Kansas, another Director lived in Ohio, and John W. Haussermann, the remaining Director, was still in Ohio awaiting to sail to the Philippines in August of 1947 on the reservations he had procured in January of 1947 (R. p. 131-2).

In short, the record facts were that Benguet had no office or place of business in the United States at time of suits, that it had no business, as that word is understood, done or

to be done in Ohio or in the United States (R. p. 129); that John W. Haussermann, Benguet's President and General Manager, was in the United States temporarily and merely as an incident of the war and not because Benguet's affairs required him to be here (R. p. 131); that but for the war he would have been in the Philippines where he lived continuously since 1898; that during his enforced stay in the United States, he did whatever was asked of him by the staff in the Philippines and by the purchasing agent, and also did what he thought should be done as to the Company's affairs, although he never negotiated for or purchased any machinery, supplies and equipment because he knew nothing about these matters.

On the basis of the foregoing records facts, the lower Court entered the findings and judgments above quoted; and the Court of Appeals for the First Appellate District of Ohio unanimously affirmed the findings and judgments of the Clermont County Court in both suits to the effect that Benguet was not doing business in Ohio; that it had no business to be done within Ohio, and that John W. Haussermann, its President and General Manager upon whom summons was attempted to be served, could not for those reasons be considered the managing agent of Benguet within the meaning of the Ohio statute governing service of process on foreign corporations.

The Ohio Supreme Court also affirmed those findings and judgments.

It is conceded that in Ohio the syllabus of a case is the law of Ohio (Petitioner's Brief p. 8); and the opinion is merely an expression of the thoughts of the Judge who wrote the opinion.

The syllabus of the Ohio Supreme Court decision, so far as is pertinent to the inquiry before this Court, is as follows:

> "1. The doing of business in this state by a foreign corporation, which has not appointed a statutory agent upon whom service of process against the corporation

can be made in this state, or otherwise consented to service of summons upon it in actions brought in this state, will not make the corporation subject to service of summons in an action *in personam* brought in the courts of this state to enforce a cause of action not arising in this state and in no way related to the business or activities of the corporation in this state."

COUNTER STATEMENT OF THE CASE.

Petitioner, on page 4 of her Brief, refers to the cases of *Perkins* v. *Guaranty Trust Co.*, 274 N. Y. 250, 8 N. E. (2d) 849, and *Perkins* v. *Benguet Consolidated Mining Company*, 55 Cal. App. (2d) 720, 132 Pac. (2d) 70, in which certiorari was denied, as holding that she was the owner of the shares of stock in Benguet which forms the basis of her suit. Those decisions were rendered in 1937, as to the New York case, and in 1942, as to the California case.

On page 9 of her Brief, Petitioner states:

> "Under such circumstances, the Petitioner would have to go to a foreign country for relief and prosecution of her actions before courts, whose decisions, the highest tribunals in New York and California have said reeked with fraud in reference to this controversy."

This is rather a strong statement to make—that the decisions of the Philippine courts reeked with fraud; and it is respectfully submitted that neither the New York Court nor the California Court ever made such a statement. What the New York Court said (Paragraphs 16 and 17 of its Opinion), and this was done on the sole testimony of Petitioner, was that the prior Philippine adjudications in cases between Petitioner and her husband over the same shares of stock, in which Benguet was not a party, had been procured through the constructive fraud of the husband, consisting of unfair dealing and overreaching on his part in his transactions with his wife and in erroneously advising her that the Philippine law applied to their property ownership.

In the record of the case before the Clermont County Common Pleas Court, and before the Court of Appeals for the First Appellate District of Ohio, and also in the record before the Ohio Supreme Court, although not printed, was a decision rendered by the Court of First Instance of Manila, Philippines, in April of 1947, subsequent to the New York and California decisions, in a case in which Petitioner and her husband were parties, and in which Benguet was a party by way of interpleader. That case involved the issue of the ownership of the shares of Benguet stock mentioned on Page 4 of Petitioner's Brief and the dividends declared thereon, which were the same shares of stock and dividends involved in the New York and California proceedings. In that case, Petitioner was present at the trial in person and was represented by counsel, and she made practically the same claims, by way of cross-claims, for dividends and damages against Benguet which are made in the two suits involved in this proceeding, excepting that the amount of damages sought was less and the amount of the dividends sought was slightly different. The decision and judgment in that case were that Petitioner was not the owner of the shares of stock in question and was not entitled to receive the dividends thereon, but that the same were part of the community property between herself and her husband; that under the Philippine law the husband was entitled to the possession, control and disposition of the stock and dividends; and that the Court would not follow the New York adjudication because, among other reasons, that New York adjudication had been procured "through the perjured and false testimony of the Defendant, Idonah Slade Perkins, in the aforesaid New York case", which her husband had proven.

In the New York case, which was a suit between Petitioner and her husband over the identical shares of stock in Benguet, in which suit Benguet was not a party, Petitioner's husband allowed Petitioner to testify, *completely uncontradicted*, that the shares of stock had been purchased

by her out of her funds brought to the marriage. In the Philippine case, decided in 1947, Petitioner allowed her husband to testify and prove, *completely uncontradicted*, that the shares of stock had been purchased by her husband out of his earnings during the marriage.

The decision of the Philippine Court rendered in April of 1947 is attached to this Brief as an Appendix.

By reason of the Philippine law and Philippine adjudications prior to 1937, Petitioner's husband received from Benguet the dividends on the stock in question beginning with 1930 through May of 1937. By reason of the New York decision of 1937, on which judgment was entered in 1938, rendered and entered on Petitioner's *uncontradicted* testimony in the suit there between herself and her husband, Petitioner has received from Benguet the dividends beginning with 1930 through March of 1940; and by reason of the Philippine decision and judgment of 1947, rendered in the suit there between Petitioner and her husband, in which Benguet was a party by way of interpleader, and rendered on the *uncontradicted* testimony of the husband, Petitioner's husband has been awarded dividends from 1937 through 1941. Thus, Petitioner and Petitioner's husband have each received court awards for dividends on the same shares which should have been paid but once, to the loss of Benguet in cash to this date for duplicate dividends on the same shares of over $500,000.00. The Philippine suit decided in 1947 relitigated anew what Petitioner and her husband had theretofore litigated in New York—the only difference being that Benguet was not a party to the New York litigation, but was a party by way of interpleader in the Philippine litigation decided in 1947, and was bound by the Philippine decision of 1930-4 and of 1947 because it is subject to the jurisdiction of the Philippine courts by reason of its being a Philippine company.

ARGUMENT.

(a)

The Ohio Supreme Court did not decide that Benguet was doing business in Ohio or that John W. Haussermann was its managing agent in Ohio.

It will be observed from Benguet's Statement of the Question Presented that it is different from that set forth by Petitioner in her Brief:

Petitioner (page 2 of her Brief) states that the Ohio Supreme Court held that Berguet was "doing business in Ohio" and that "personal service upon the President and General Manager was found as wanting in due process because the cause of action was in no way related to the business or activities of the corporation in Ohio.".

We respectfully submit that the Supreme Court of Ohio did not so hold, and that there is not one word in the syllabus or in the opinion so stating.

The Ohio Supreme Court categorically affirmed the findings and judgments of the lower Courts. These findings and judgment were that Benguet was not doing business in Ohio and that John W. Haussermann, its President and General Manager, upon whom attempted service was made, was not the "managing agent" of Benguet within the purview of the Ohio statute governing the service of process because Benguet had no business to be done in Ohio requiring an agent in Ohio to manage and conduct the same.

We must take it, from the categorical affirmance of the lower Courts, that the Ohio Supreme Court did not use the words, "doing of business" and the words, "business or activities", in its syllabus or in its decision in the sense and to the end for which Petitioner contends if the syllabus and the decision are properly analyzed.

In its Statement of the Case, the Supreme Court of Ohio says that the Trial Court granted the Motions to Quash the Service of Summons because, "the business done by the Defendant in Ohio was insufficient to legally authorize serv-

ice of process upon the Defendant in Ohio" for a judgment *in personam*. The Court affirmed these judgments of the lower Court.

We say that upon a proper analysis of the Ohio Supreme Court syllabus and decision, the use of the words, "doing of business", and the words, "business or activities", must be related to the factual record before the Court, which factual record showed as the Ohio Supreme Court itself stated it in effect, that whatever John W. Haussermann, the President and General Manager of Benguet, did in Ohio, it was insufficient to legally authorize service of process upon Benguet in Ohio. As this Court, and all other courts, has and have said, each case on the validity of service of process must stand on its own facts.

So related, the quoted words take on as a meaning the type of business activities which were conducted in Ohio during his enforced stay because of the war by John W. Haussermann, in his capacity as President and General Manager of Benguet, as being insufficient from which to spell out a consent to service of summons upon the actions brought in the State of Ohio. In other words, we say that the syllabus should be read as follows:

> "1. The doing of business in this state (of the type *done* by Benguet) by a foreign corporation * * * will not make the corporation subject to service of summons in an action *in personam* brought in the Courts of this State to enforce a cause of action not arising in this State and in no way related to the business or activities of the corporation in this State." (Parenthetical expression supplied.)

As we have said, the factual record in this case was before the Ohio Supreme Court; and it was very much so because it was set out rather *in extenso* by the Court of Appeals in its decision. (*Perkins* v. *Benguet Consolidated Mining Company*, 88 O. App. 118.)

But, even though the syllabus and decisions are read in the light of giving the words, "doing business" what may be called the usual significance, still—

(b)

The Ohio Supreme Court decision is in accord with the trend of decisions and the pronouncements of this Court.

Taking the syllabus and the decision of the Ohio Supreme Court by itself; without any reference to the factual background of the case, still we say that the decision is a correct interpretation of the decisions of this Court and of the thoughts expressed by this and other Courts.

In other words, if we assume that the Supreme Court of Ohio meant to announce as the rule of public policy in Ohio that no suits would be entertained against a foreign corporation to enforce a cause of action not arising in Ohio and in no way related to the business or activities of the corporation in Ohio *unless* the foreign corporation had appointed a statutory agent in Ohio for service of process or *unless* it had otherwise consented to service in Ohio, such a rule would in no way be in contravention of any decision or pronouncement of this Court.

The Ohio Supreme Court decision would permit suits to be brought in Ohio against any foreign corporation which had appointed a statutory agent in Ohio, no matter whether or not the cause of action arose in Ohio and no matter whether or not the cause of action was related to the business or activities of the foreign corporation in Ohio. It would also permit such suits to be brought if the foreign corporation otherwise consented to service.

The only suits which would be barred would be those brought against a foreign corporation in other situations, i.e., where the foreign corporation has not appointed a statutory agent or otherwise consented to service; and even then, not all types of actions would be barred—it would only be those actions where the cause did not arise in Ohio or was in no way related to the business or activities of the corporation in Ohio.

There is ample warrant in the decisions and thoughts on the subject for such a rule of public policy. The Ohio Su-

preme Court itself heretofore announced what is tantamount to the same rule in the case of *Loftus* v. *Pennsylvania RR. Co.*, 107 O. S. 352, where, as to a cause of action arising in Pennsylvania, the Court said:

> "It has not been made to appear that this Plaintiff has been denied access to the courts of Pennsylvania, or that in any manner substantial prejudice results to him by the Ohio courts having sustained the motion to quash. Again, it is difficult to see how he can be prejudiced by being required to litigate his cause at the place of his residence, or at the place of the injury, in the state of Pennsylvania, where no doubt his witnesses reside, and where his litigation can be prosecuted at much less expense than in the distant jurisdiction of the state of Ohio. We are not required to justify the acts of the Legislature, but it might very pertinently be remarked at this point that the courts of our state are maintained at considerable expense, and only a small fraction of such expense is charged to litigants, the major portion being met by taxes and levied upon the property of the state. The constitutional mandate that all courts shall be open does not require that the burdens of taxation in a single state shall be further increased to provide remedies by judicial process for those who for reasons of their own prefer to reside in other states. It may be further remarked that the statute makes ample provisions for a stranger within our gates if injured in person or property, while sojourning in or traveling through the state."

And, in the case of *Iron City Produce Co.* v. *American Rwy. Express Co.*, 22 Ohio App. 165, 153 N. E. 316, the Ohio court, following the doctrine of *Davis* v. *Farmers Co-op. Equity Co.*, 262 U. S. 312, 67 L. Ed. 996, held invalid an attempted service of process against a foreign corporation in an action which arose outside the State of Ohio as being repugnant to the provisions of the Constitution of the United States.

The foregoing pronouncements exactly square away with holdings of this Court. The *Loftus* case follows the rule of

forum *non conveniens*, and this Court, in the *International Shoe* v. *Washington* case, 326 U. S. 310, 317, 90 L. ed. 95, 102, said that—

> "An 'estimate' of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection."

The *Iron City Produce* case follows not only the doctrine of the *Davis* case, *supra*, but also follows the rule announced in a number of other cases.

The latest pronouncement of the Ohio Courts, the decision here under review, also follows the decisions and suggestions of this Court. Among them are the following:

For instance, in the case of *Robert Mitchell Furniture Co.* v. *Selden Breck Construction Company*, 257 U. S. 213, 215, 216, an Ohio corporation had sued a Missouri corporation in the United States District Court for the Southern District of Ohio on a contract to be performed in the State of Michigan. The defendant corporation had appointed one Nash as its statutory agent in Ohio upon whom service of process could be made. The lower Court held that the service upon Nash was bad. In passing on the question, this Court said:

> "The purpose in requiring the appointment of such an agent is primarily to secure to local jurisdiction in respect of business transacted within the state. * * * But the reasons for a limited interpretation of a compulsory assent are hardly less strong when the assent is expressed by the appointment of an agent than when it is implied from going into business in the state without appointing one. *In the latter case, the implication is limited to business transacted within the state.* *Simon* v. *Southern R. Co.*, 236 U. S. 115, 131, 132, 59 L. ed. 492, 500, 501, 35 S. Ct. Rep. 255; *Old Wayne Mutual Life Assoc.* v. *McDonough*, 204 U. S. 8, 22, 23, 51 L. ed. 345, 351, 27 Sup. Ct. Rep. 236. * * * *The indications of the Ohio statutes, so far as they go, look to 'liability incurred within this state'.* Gen. Code, § 181.

As we know of no decision to the contrary by the supreme court of Ohio, we are of the opinion that the service upon Nash was bad."

A notable thing about the decision of the Supreme Court of the United States in this case is the statement that the indications of the Ohio statutes look to "liability incurred within the state".

Again, in the case of *Missouri Pacific RR. Co.* v. *Clarendon Boat Ore Co.*, 257 U. S. 533, this Court said:

"Still less is it encumbent upon a State in furnishing such process (against a foreign corporation) to make the jurisdiction over the foreign corporation wide enough to include the adjudication of transitory acts not arising within the State. Indeed, so clear is this that in dealing with the statutes providing for service upon foreign corporations doing business in the State upon agents whose designation as such is especially required, *this Court has indicated a leaning toward a construction, where possible, that would exclude from their operation causes of action not arising in the business done by them in the State.*"

Another instance is the decision of this Court in the case of *L. & N. Rwy. Co.* v. *Chatters*, 279 U. S. 320, 324, 328, 73 L. ed. 711, 716, 718, where this Court said:

"A foreign corporation is amenable to suit to enforce a personal liability if it is doing business within the jurisdiction in such a manner and to such an extent as to warrant the inference that it is present there. (Citing cases) Even when present and amenable to suit *it may not*, unless it has consented (citing cases), *be sued on transitory causes of action arising elsewhere which are unconnected with any corporate action by it within the jurisdiction* (citing cases).

"* * * We address ourselves to the question, decisive of this branch of the case, whether the *Southern*, being present within the State of Louisiana, is amenable to suit, on this cause of action as one arising out of business done within the State, or from such action of the

corporation within the State as to subject it to liability there. * * *"

The Southern Railroad claimed that the cause of action did not arise out of anything it had done in Louisiana, but this Court found that, while the cause of action arose outside of the State of Louisiana where suit was brought, nevertheless, the injuries arose on a trip which plaintiff took on a railroad ticket purchased in Louisiana where the Railroad maintained an office to sell tickets for travel on its trains, and thus that the action arose out of business transacted within Louisiana. The Court then said:

> "It was out of this action within the State that the present obligation of Southern arose, although the alleged breach of it occurred elsewhere * * *.
>
> "Where jurisdiction has been denied, the cause of action not only arose outside the State, but it was not shown to have arisen out of any business conducted by the corporation within it or to have had any relation to any corporate act there (citing cases). *In such a case, whether the jurisdiction invoked be deemed to depend upon the presence of the corporation within the State through the doing of business there, or on its consent by the designation of an agent, the implication is that the liability to suit does not extend to causes of action which have nothing to do with any act of the corporation within the State.* (Citing case) But where the cause of action does arise out of a corporate act within the jurisdiction, the presumption would seem necessarily to be the other way."

Finally, in the case of *International Shoe Co.* v. *Washington, supra,* this Court said:

> "But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations and, *so far as those obligations arise out of or in connection with the activities within the state,* a procedure which requires the corporation to respond to

a suit brought to enforce them can, in most instances, hardly be said to be undue."

In the aforesaid case this Court recognized (page 318) its prior adjudications, "that continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity."; and this Court cited its prior adjudications on the subject. Of course, the decision in the *International Shoe Co.* case was correct on the facts present before the Court in that case because the very activity of the *International Shoe Co.* in the state of Washington was what gave rise to the cause of action and to the tax sought to be collected under the cause of action.

In closing this point of the argument, we should like to refer to the excellent Article in the *Harvard Law Review*, Vol. 50, p. 113, where, in summarization, it is stated:

> "Generally, causes of action arising out of business done within the state by the corporation is invariously exercised by the Courts. If the cause of action arose outside the state, the tendency is to refuse to exercise jurisdiction whether the action is brought by a resident or nonresident plaintiff (citing several cases)."

Numerous other decisions could be cited and quoted but they would be merely cumulative in their effect.

(c)

The Ohio Supreme Court decision does not in any wise violate Section 2, Clause 1 of Article IV of the Constitution of the United States.

In her Brief (p. 2) Petitioner states that one of the questions posed by the Ohio Supreme Court decision is whether there can be one rule for non-resident individuals and a different rule for foreign corporations, without violating Article IV, Section 2, Clause 1 of the Con-

stitution of the United States, which seeks to prevent unjust discrimination. The Clause referred to is as follows:

> "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

We cannot understand how this Clause comes into question or operation in this case. Certainly, the decision of the Supreme Court of Ohio does not in any wise deprive petitioner, in her position as a resident and citizen of the State of Connecticut, of any privilege or of any immunity which are given by the decision to the residents and citizens of the State of Ohio. The decision applies with equal force whether the action is brought by a plaintiff resident or non-resident, citizen or non-citizen of the State of Ohio.

Even though it were that the Ohio Supreme Court decision gave citizens of the State of Ohio greater rights in suing a foreign corporation in the State of Ohio than were given to a non-citizen of Ohio, it has been repeatedly held that this would not in any wise conflict with the provisions of Clause 1, Section 2 of Article IV of the Constitution of the United States.

For instance, in the case of *Central Railroad, etc.* v. *Georgia Construction, etc. Co.*, 32 S. C. 319, 11 S. E. 192, the statute provided that—

> "An action against a corporation created by or under the laws of any other State, government or country, may be brought in the Circuit Court—
>
> (1) by any resident of this State, for any cause of action; or
>
> (2) by a plaintiff not a resident of this State, when the cause of action shall have arisen, or the subject of the action shall be situated, within the State."

The Court held that this was not violative of Clause 1 of Section 2 of Article IV of the Constitution.

In the case of *Robbins* v. *Oceanic Steam Navigation Co.*, 112 N. Y. 323, 19 N. E. 625, 2 L. R. A. 636, the statute was that a resident of the State, or a domestic corporation, could maintain an action against a foreign corporation for any cause, no matter where it arose; but that an action by a non-resident plaintiff against a foreign corporation could only be maintained in the cases specified but in no event for a cause of action which arose outside the State limits. The Court there held that this statute did not in any wise conflict with Clause 1, Section 2 of Article IV of the Constitution.

In the case of *Anglo-American Provision Co.* v. *Davis Provision Co.*, 191 U. S. 373, this Court had under consideration the aforesaid New York statute which permitted the bringing of an action against a foreign corporation within the State of New York by a non-resident only where the cause of action arose within the State, which statute gave to residents of New York and to New York domestic corporations the right to maintain an action against a foreign corporation for any cause, no matter where it arose. This Court held that this statute of New York was not in any wise unconstitutional and did not violate Section 2, Clause 1 of Article IV of the Constitution.

In the case of *Grovey* v. *Washington Nat. Ins. Co.*, 196 Ark. 697, 119 S. W. (2d) 503, it was held that the State court's refusal of jurisdiction over an action by a non-resident of the State against a foreign insurance company authorized to do business in the State for breach of an insurance agency contract executed outside of the State, was not a violation of Section 2, Clause 1 of Article IV of the Constitution.

And we refer the Court also to the *Loftus* case, *supra*, a decision by the Ohio Supreme Court.

While it is true that the Ohio Supreme Court has decided (*Mattone* v. *Argentina*, 123 Ohio State 393, 175 N. E. 603) that an individual non-resident against whom "personal

service is had", may be sued in the State of Ohio on a transitory cause of action arising outside of Ohio and in no way related to the business or activities of the non-resident in Ohio, still the decision under review cannot in any wise be called inconsistent with this holding. The fact is that the decision under review permits suits in the State of Ohio against foreign corporations in causes of action not arising in Ohio and in no way related to the business or activities of the foreign corporation in Ohio, where, "personal service is had". The decision specifically so states. If the foreign corporation has appointed a statutory agent upon whom service of process may be had, service on such agent would, of course, be personal service, and if the corporation otherwise has consented to service of process, still personal service would be had.

But even though the decision under review announced a rule as applicable to a foreign corporation defendant different than that announced in the *Mattone-Argentina* case, *supra*, as applicable to an individual as a defendant, nevertheless the cases cited under this point are all to the effect, on principle, that this would not violate the provisions of the Constitution of the United States.

The reason for this is quite clear. An individual may migrate from city to city and from State to State with no permanent place of abode, and by the simple expedient of such migration, the individual could escape liability for his actions, if he could not be sued wherever personal service of process could be had against him, no matter where the cause of action arose. This is not true with reference to corporations. Corporations have a permanent place of abode where any sort of suit may be maintained against them. The courts of the State or country of the creation of the corporation are always open for actions against the corporation whether by a resident or non-resident plaintiff and no matter where the cause of action arose. In the early days, the thoughts of the Courts were that a corporation could not be sued elsewhere than in the State or country

which created it. Later, this notion of the law very properly and wisely changed until, at the present day, the Courts are all agreed that, if a corporation enters into another State to there perform some part of its functions from the performance of which a cause of action arises within that foreign State, the corporation may be sued in such foreign State on such cause of action. In the evolution of this principle of law, however, the question has often arisen as to whether or not suits against corporations in States foreign to that of their creation could be entertained on causes of action not arising within the State where sued and in no way related to or arising out of the business transacted in the State where sued.

On this score, it has not been thought that the refusal of jurisdiction against a foreign corporation on causes of action which arose outside the State and which were in no way related to anything done by the foreign corporation within the State, was in anywise violative of the provisions of the Constitution of the United States; and as to this, we refer to the cases cited above.

There is no decision of the Supreme Court of the United States holding that under any of the provisions of the Constitution, a State must maintain courts within which suits may be brought against foreign corporations on causes of action arising outside of the State.

Actually, this Court in the case of *Anglo-American Provision Co.* v. *Davis Provision Co., supra*, held specifically that the Constitution of the United States does not reqnire a State to provide such Courts, and also specifically ruled that the New York statute was not unconstitutional in its provision that an action against a foreign corporation could be maintained in the State of New York by a non-resident of New York or by another foreign corporation only where the cause of action arose within the State.

A case on the subject is that of *Atchison, Topeka & Santa Fe* v. *Weeks*, 254 Fed. 513 (C. C. A. 5th; Cert. den. 249 U. S. 602). In that case, the Court held that in order that a cor-

poration, foreign to a State, may be subject to process in the foreign State, it must have placed itself, with reference to the cause of action, in the same position as an individual. The Court said that this may result from the establishment in the State of the main office of the corporation, and the discharge there of the principal corporate functions. The action which had been brought in that case had arisen in the State of California and suit had been brought in the State of Texas. Even though the foreign corporation maintained a General Manager in Texas in an office from which he directed the operations of the railroad by letters and telegrams to its officers and agents in other States, and even though the railroad's General Superintendent, Train Masters, General Foremen, and Mechanical Superintendent were also at this office and maintained their residence in Texas and assisted in directing the Company's operations outside of the State, with a clerical force for that purpose, the Court held that the Company had not placed itself in such position in Texas that would require the upholding service of process on a cause of action which did not arise out of the activities in Texas but which arose by reason of the operation of the railroad in the State of California.

(d)

The Ohio Supreme Court decision is not in conflict with the Federal Circuit Court decisions which petitioner cites.

Petitioner states that the Ohio Supreme Court decision is contrary to, and in direct conflict with, the decisions of the Sixth and Second Circuits in the case of *Maichek* v. *Bertha Consumers Co.*, 25 Fed. (2d) 257 (6th Cir.); and *Bomze* v. *Nardis Sportswear Company*, 165 Fed. (2d) 33 (2nd Cir.). It is very difficult to understand how such statement can be made.

In the *Maichek* case, *supra*, the Circuit Court of Appeals sought to ascertain and apply the Ohio law, admitting in

doing so that there was some doubt as to the correctness of the conclusion which it reached. The Court said:

> "Section 11276 of the Ohio General Code provides that any action, not local, may be brought against a foreign corporation in any county where it may be found, and section 11290 directs that process issued against a foreign corporation doing business in the state and having a managing agent therein may be served upon that agent. Construing that statute and the applicable general law, it must be taken as the settled rule in Ohio that a foreign corporation, actually doing business within the state and having therein a managing agent who is served, is subject to be sued therein upon a transitory cause of action arising outside of the state. *Handy* v. *Ins. Co.*, 37 Ohio St. 366, 370; *Loftus* v. *Pennylvania R. Co.*, 107 Ohio St. 352, 140 N. E. 94. *It is suggested rather than distinctly claimed, that the state cannot rightly subject a foreign corporation to this burden* (see *Robert Mitchell Co.* v. *Selden Co.*, 257 U. S. 213, 216, 42 S. Ct. 84, 67 L. Ed. 201); but there has been no such distinct holding by the Supreme Court and we think we should accept the Ohio rule as affecting foreign corporations which locate themselves in the state for business purposes."

It will be observed that the Circuit Court of Appeals stated in its ruling that it was accepting what it felt to be the Ohio rule. In other words, if the instant decision under review had been a pronouncement of the Ohio Court when the *Maichek* case was decided by the Circuit Court of Appeals, unquestionably, the Circuit Court of Appeals would have followed the ruling of the Ohio Court—the Federal Courts always follow the rulings of the State Courts in cases of this sort. In any event, the Circuit Court of Appeals did, as we have pointed out, express some doubt as to its holding.

As to the *Bomze* case, *supra*, the Circuit Court said that no Federal question was involved because the cause of action sued on arose in New York out of the very business done in New York by the foreign corporation. As to this

there can be no question for the Circuit Court of Appeals held:

> "In conclusion we hold that the defendant was doing enough business in New York to satisfy the state decisions; and that, since the cause of action arose—at least as to the New York sales—out of these activities which made the corporation 'present' (in New York), any federal question is set at rest." (Parenthetical expression supplied.)

The Circuit Court of Appeals, in reaching its conclusion as above noted, had this to say, from which it is hard to conceive how Petitioner could suggest that decision as being in direct conflict with the decision of the Ohio Supreme Court in question:

> "However, we understand that since Tauza v. Susquehanna Coal Co., supra, the law of New York has been that a foreign corporation is either 'present', or it is not; and once it is found to be 'present', it becomes subject to process, regardless of whether the particular liability in suit has arisen out of the activities which collectively constitute the 'presence'. How far this has been a reflection of what the New York Courts suppose to be the constitutional limit of their powers is not clear. In Lilibridge, Inc. v. Johnson Bronze Co., supra, Finch, J., declared that the state courts should take the federal decisions as their absolute standard, positive as well as negative; but, when the Court of Appeals affirmed the decision; it wrote no opinion.
>
> "If the state courts do take the Supreme Court decisions in both senses: that is, if they regard the inquiry, how far they may go, as coalesced with the inquiry, how far they will go, International Shoe Co. v. Washington, has effected a change. The Supreme Court there declared that the corporation's 'presence' was to be determined by balancing the opposed interests; the convenience of the obligee against the burden upon the corporation. That is a test not different in kind from that which has been repeatedly used, when the inquiry is whether it will 'unduly burden' interstate commerce to fetch a corporation, engaged in such commerce, from

the place of its principal activities to defend the action. *If that be the test, the question at once becomes relevant whether the action is based upon a liability arising out of the local activities;* for it is almost always less burdensome to subject a corporation to the defense of actions so arising than to those arising elsewhere. Indeed, probably some such notion is at the basis of those decisions which permit a state to subject to process in personam transients who, while within its borders, have incurred a liability under its laws."

Petitioner also refers to the case of *Southwick Foundry & Machine Co.* v. *Franz Machine Co.*, 48 Fed. (2d) 714 C. C. A. 6th. In that case, service had been made upon the statutory agent of the foreign corporation and suit had been brought on a cause of action arising outside of the State of Ohio. The Circuit Court of Appeals held that this was a valid service of process. This decision, we submit, is completely consistent with the instant decision under review because in the decision under review, the Supreme Court of Ohio said that such a suit would be entertained by the Ohio Courts, that is, where service was had upon a statutory agent.

(e)

The Ohio Supreme Court decision is in accord with decisions of the Federal Circuit Courts of Appeal.

Not only is the decision of the Ohio Supreme Court not in conflict with the three decisions of the Federal Circuit Courts of Appeal cited by the Petitioner, but we state that the Ohio Supreme Court decision is in accord with decisions of the Federal Circuit Courts of Appeal which have passed on the subject. We shall cite but two of such decisions.

As an instance, we should like to cite the case of *American Indemnity Co.* v. *Detroit Fidelity and Surety Co.*, 63 Fed. (2d) 395 (5th Cir.) where the Court said that the upholding of the service of process in a suit against a foreign corporation "should be confined to suits arising from busi-

ness done" in the State where the suit was brought, and cited Supreme Court cases on the subject.

As another instance, there is the decision of the Circuit Court of Appeals for the Eighth Circuit in the case of *Rausch* v. *Commercial Travellers Mutual Accident Association of America*, 38 Fed. (2d) 766, (cert. den. 281 U. S. 763, 74 L. Ed. 1171), in which the Court held that service of process in the State of Missouri upon the agent of the insurance company in Missouri on a suit based on a policy contracted for and issued in the State of New York was bad under both the State and the Federal laws.

CONCLUSION.

In conclusion, we should like to state that this Court and the Federal Courts have always held that it is for the State to determine how far it will go in entertaining suits against foreign corporations. This is specifically recognized in, among others, the two cases cited in this Brief—*Robert Mitchell Furniture Co.* v. *Selden Breck Construction Co.*, *supra*, and *Maichek* v. *Bertha Consumers*, *supra*. In the last named case, the Circuit Court of Appeals suggested that there was some doubt as to whether the suit would lie in the Ohio Courts on a transitory cause of action arising outside the State where personal jurisdiction over the corporation depended upon the service on a statutory agent, and in the first mentioned case, this Court said that the indications of the Ohio statutes, so far as they go, look to liability incurred within the State of Ohio, and further suggested that unless the State law, either as written or as construed by the Ohio Courts, were otherwise, this Court would not uphold the validity of the service of process against a foreign corporation on a transitory cause of action.

The Supreme Court of Ohio has now interpreted the Ohio statute with reference to service of process against foreign corporations and limited the validity of such service to situations where the cause of action arose out of something

done by the foreign corporation within the State of Ohio *unless* the foreign corporation had appointed a statutory agent for service of process or *unless* it had otherwise consented to service of process. This, we say, now becomes the law of Ohio, which must be followed by the Federal Courts inasmuch as it does not transcend against anything prohibited by the Constitution of the United States.

For the reasons stated above, and in the foregoing parts of this Brief, we suggest that decision of the Ohio Supreme Court should be affirmed.

Respectfully submitted,

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APPENDIX.

REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF MANILA

Case No. R-53317.

EUGENE ARTHUR PERKINS, *Plaintiff*,
v.
BENGUET CONSOLIDATED MINING CO. and IDONAH SLADE PERKINS, *Defendants*.

DECISION

This case was commenced on July 6, 1938, by the filing of the original complaint against the Benguet Consolidated Mining Company as the sole defendant. The plaintiff prayed for a judgment, ordering the company to pay the plaintiff the unpaid dividends theretofore declared on the 54,870 shares of its stock standing in the name of the plaintiff, which dividends then amounted to ₱71,379.00, as well as such future dividends as might be declared by the said company on the said shares, and recognizing the plaintiff as entitled to the control and disposal of the said shares.

On August 29, 1938, the defendant Benguet Consolidated Mining Company filed its answer, admitting the material allegations of the complaint, but alleging that the company had suspended payment of dividends to the plaintiff on the shares in question, because the plaintiff's wife, Idonah Slade Perkins, had made a claim upon the company for the payment to her of the said dividends, and further alleging that the company had no interest whatsoever in the said shares and was ready and willing to pay such withheld dividends to and recognize the control and disposal of the said shares in such person as the Court may direct and also that Idonah Slade Perkins is a necessary party to the case. On August 30, 1938, the defendant company then filed a motion setting forth the necessity of including the plaintiff's wife, Idonah Slade Perkins, as party, and praying that an order

be issued by the Court requiring the plaintiff to amend his complaint by including said Idonah Slade Perkins as a party, and that summons therein be served according to law.

In September, 1938, the plaintiff filed his amended complaint, supported by an affidavit showing the necessity of service of summons upon the new defendant Idonah Slade Perkins by publication. The Court, thereafter, ordered that service of summons be made upon the new defendant by publication, and such service was duly accomplished. Through counsel, Idonah Slade Perkins appeared specially, and objected to the venue, and also moved to quash the complaint, and demurred to the jurisdiction of the Court. After due hearing, the Court by its order, dated February 21, 1939, denied said motion, and by another order, dated March 31, 1939, also denied the motion for reconsideration of the former order. The counsel accepted to said orders and instituted certiorari proceedings in the Supreme Court. The said Court denied the petition for certiorari in its decision dated November 16, 1939.

In this same case, on order of the Court the plaintiff included in the litigation another defendant, George H. Engelhard, who was claiming or pretending to have a lien over some of the shares in litigation, according to the defendant Benguet Consolidated Mining Company. During the trial of this case, this third defendant was represented by counsel; but on August 16, 1945, the said defendant appeared voluntarily and announced his intention to renounce his claim in this case, and there being no objection to his petition, the Court by order of September, 1945, dismissed the case against the said defendant, as well as his cross-claim.

On January 6, 1940, the defendant Idonah Slade Perkins filed her answer to the amended complaint of the plaintiff, which answer she replaced on July 23, 1940, with a pleading, entitled, "Amended Answer, Special Defenses and Cross-Claims," in which in effect she alleged as a defense

that the New York judgment attached to and made part of her latter pleading is *res adjudicata* on all questions raised in this suit. Plaintiff in his reply to said amended answer, alleged that the judgment of the Supreme Court of the State and County of New York and the decision of the Court of Appeals of that State on which it is based, and upon which the defendant Idonah Slade Perkins relies, are void and of no force or effect whatever, and may not and ought not to be enforced in the Philippines.

The trial of this case was commenced on July 23, 1940, and continued up to January 21, 1941. The plaintiff presented evidence oral and documentary in support of his case as alleged in his amended complaint. After which the defendant Benguet Consolidated Mining Company presented its evidence and closed its defense. The defendant Idonah Slade Perkins, through counsel, refused to present any evidence. In view thereof, the Court permitted the plaintiff to present his evidence in support of his claim that the aforesaid New York judgment was rendered beyond the authority of the Court of Appeals of the State of New York, and as a consequence of which the judgment of the Supreme Court for the State and County of New York in pursuance of the said decision of the Court of Appeals was null and void, and that said decision and judgment were obtained through fraud. When the plaintiff was in the last stages of his cross-examination by counsel for the defendant Idonah Slade Perkins on his evidence on the aforesaid claims, the said defendant Idonah Slade Perkins arrived in the Philippines from the United States and appeared in Court in person on November 4, 1940. She charged her counsel with collusion with the counsel for the other parties, but the Court found her charge to be wholly unfounded. Thereafter, her counsel, Alba Hill, filed his resignation, so that subsequently, the defendant Idonah Slade Perkins conducted her own case. However, by reason of the strange and disorderly conduct and persistent contumacious attitude of the defendant towards the Court, and,

there being nothing more to be accomplished, the case having been concluded for all practical purposes, the Court on January 30, 1941, suspended the proceedings and ordered the plaintiff to institute guardianship proceedings over the person and properties of Idonah Slade Perkins for the purpose of determining her capacity to manage her affairs. While said guardianship proceeding was pending, however, she fled this jurisdiction notwithstanding a warning given to her by the Court not to do so. She left without having appointed any attorney-in-fact to represent her and without advising the Court of any representative in the Philippines to act for her.

During the liberation of Manila, the original records of this case were completely destroyed; but on July 28, 1945, the parties were ordered to reconstitute the same, and on December 27, 1945, the Court declared the records of this case duly reconstituted. On March 27, 1946, in order to put an end to this long pending litigation, the Court required any of the parties herein, desiring to introduce additional evidence to do so within sixty days from the date of the order, after which the case would be considered closed and the Court would thereupon render its decision. None of the parties having introduced any additional evidence nor requested an opportunity to do so, the plaintiff filed an ex parte motion praying that the Court render judgment in this case.

The Court finds the following facts established by the evidence submitted during the trial of this case: The plaintiff is a citizen of the United States of America, although born in Bankok, Siam, on May 6, 1887, of parents who were both citizens of the United States. His parents took the plaintiff soon after his birth to the United States where he spent his boyhood and student days in the State of New York. Immediately after he passed the bar examinations and after taking his oath as a lawyer in New York, he came to the Philippines under contract with the Bureau of Insular Affairs, he having received his appointment in the

Philippine Civil Service before passing his bar examinations, and he has resided in this country ever since. He first worked in the office of the Attorney General of the Philippines. In 1909 he was appointed attorney of the Bureau of Lands; but in 1912 he resigned and went into the private practice of law, and he has since been practicing law in the Philippines. The plaintiff intended to make the Philippines his home ever since he first came here. After he had established himself in Manila, he brought here his mother who brought their household effects with her. A short time after her arrival, she died in Manila and was buried at Cementerio del Norte. The plaintiff later bought a family burial plot. He has all his business and professional interests here, and none elsewhere. He has regularly paid his cedula and residence certificates and all other taxes due from him to the government from 1908. He was married in Manila in 1914 to the defendant Idonah Slade Perkins, as a resident of the city of Manila. He has made only three short vacations to the United States. He was appointed by Governor Smith of New York as Commissioner of Deeds for said State in the Philippines; and to be eligible to such position in a territory beyond the territorial limits of the State, the person appointed must be a resident of the place where he would exercise his functions. The plaintiff built an expensive residence on Dewey Boulevard, and has resided there since its purchase in 1924 and before that he had acquired two other homes in Manila. The defendant Idonah Slade Perkins resided with him in each of said homes from the time of their marriage until 1930 when their family troubles started. No evidence has been offered in this case contradicting the evidence for the plaintiff, and the Court finds, therefore, as proven fact that the plaintiff since his arrival in the Philippines in 1908 to this date has been domiciled in the Philippines.

The Court also finds proven that at the time of their marriage on January 3, 1914, the plaintiff and his defendant wife, Idonah Slade Perkins, were citizens of the United

States, and the plaintiff was a domiciled resident of the city of Manila, and the defendant Idonah Slade Perkins gave as her residence Spokane, Washington; that at the time of their marriage they did not sign any ante-nuptial agreement with respect to their property rights; that by virtue of the defendant's marriage to the plaintiff, she lost her former residence and became a resident of the City of Manila, since the residence of the wife follows that of the husband's; that the espouses not having signed any ante-nuptial agreement regarding their properties, the conjugal property system and law apply to them and hence the conjugal partnership was established between the said spouses and their respective rights should be governed by the provisions of the Civil Code, particularly Arts. 1315, 1392 to 1416, inclusive.

It is admitted by all the parties that the defendant Benguet Consolidated Mining Company is a "sociedad anonima" organized in accordance with the provisions of the Philippine Code of Commerce with head offices in the city of Manila; and that it has mining properties in the Philippines and the situs of its shares of stock is in the Philippines. The evidence for the plaintiff was uncontradicted that the original 24,000 shares of stock of the company involved in this case were formerly standing in the name of the defendant Mrs. Perkins, although they were acquired after January 3, 1914, the date of the marriage of the spouses. It also appears from the uncontradicted evidence that all the shares here in question were purchased by the plaintiff with the funds acquired by him during his marriage with his defendant wife, and therefore, are and should be considered under the law as assets of the conjugal partnership. Moreover, the conjugal nature of the shares of stock in question has been adjudicated by this Court in the previous litigations between the plaintiff and the defendant Idonah Slade Perkins, particularly Civil Case No. 37517 of this Court, entitled "Idonah Slade Perkins versus Eugene Arthur Perkins," wherein the

Court in accordance with the allegations in her complaint found that the shares there in question then, and now here in question, are conjugal property. The decision of this Court was confirmed *in toto* by the Supreme Court of the Philippines in G. R. Nos. 35570 and 35650, entitled "Idonah Slade Perkins versus Eugene Arthur Perkins" and reported in Vol. 57, page 205, of the Philippine Reports, and this Court in aid of execution of the judgment as affirmed by the Supreme Court, ordered "that the certificates of stock Nos. 1484, 1595, 2176, 2238, 2773, 2780 and 2781, which at present appear registered in the books of the Benguet Consolidated Mining Company in the name of the defendant Idonah Slade Perkins be cancelled, and that other and new certificates of stock in the name of the defendant-petitioner, Eugene Arthur Perkins, be issued, and that when these new certificates shall have been issued, they be delivered to said defendant". The Court granted the company a period of five days from the receipt of a copy of the order, within which to comply therewith. In obedience to said order, the company cancelled the old certificates and issued new ones, Nos. 6392 to 6398 for 24,000 shares, in the name of Mr. Eugene Arthur Perkins in his capacity as manager of the properties of the conjugal partnership, without the original certificates having been surrendered by the defendant, Mrs. Perkins, to the company, because she had previously sent them to a bank in New York, and thereafter refused to deliver the same to the plaintiff in spite of her having been ordered to do so by the Court in Civil Case No. 37517.

It is clearly proven by the evidence, therefore, that the shares in question were not purchased by the defendant with money of her own, apart and separate from the funds of the conjugal partnership, but were acquired after the plaintiff and the defendant Mrs. Perkins were married, and during the existence of said marriage with conjugal funds. Therefore, all said shares are and pertain to the conjugal partnership of which the plaintiff is by law the manager

and that the plaintiff, as such manager, is entitled to the control and disposal of the same, and also to receive the dividends declared thereon, and that the defendant company has in fact recognized his rights thereto prior to June 3, 1937, but after said date the company refused to pay the plaintiff the dividends due and payable on said shares and likewise refused to recognize the rights of the plaintiff to control and dispose of said shares. The evidence is also uncontradicted that at the time of commencement of this action there was due and payable to the plaintiff dividends on said shares in the amount of ₱71,379.90.

With respect to the New York judgment, an alleged copy of which was attached to the pleadings of defendant Mrs. Perkins, entitled "Amended Answer, Special Defenses and Cross-claims" dated July 23, 1940, and which judgment is impugned by the plaintiff in his second amended reply, as having been rendered without jurisdiction, and obtained through the perjured and false testimony of the defendant, Idonah Slade Perkins in the aforesaid New York case, the plaintiff proved, upon defendant Mrs. Perkins' failure and refusal to prove her case, his allegations in the said second amended reply, impugning the decision in the New York case. The principal contention of defendant Mrs. Perkins is that the questions raised in the present case have been finally adjudicated by the Supreme Court of the State of New York in its decision dated November 27, 1938, and hence said decision is *res adjudicata*. This Court, therefore is called upon either to uphold the final judgment and order of this Court in the case between plaintiff herein and defendant Idonah Slade Perkins, in Civil Case No. 37517, which final judgment was duly carried to execution after the judgment had been appealed to the Supreme Court of the Philippines, or to enforce the judgment of the Supreme Court of the State of New York, which purports to have rendered void, and of no binding force, the aforesaid final judgments and orders of this Court and the Supreme Court of the Philippines.

This Court after a careful consideration of the facts and the law involved in this case, is constrained to find that the New York judgment of the Supreme Court of the State and County of New York and the decision of the Court of Appeals of said State on which it is based and which defendant Idonah Slade Perkins relies, are void and of no force and effect, and may not and ought not to be enforced in the Philippines, because said judgment and decision fail to afford full faith and credit to the judgments, orders and decrees of the Philippine Courts, involving the same issues, as was incumbent on the courts of the State of New York to do, by virtue of Section 905 of the U. S. Revised Statutes; and that the Supreme Court of the State and County of New York as well as the Court of Appeals of said state had no jurisdiction to determine, as they did purport to determine, the ownership of the shares of stock of the Benguet Consolidated Mining Company, said company, being a "sociedad anonima", having its situs in the Philippines. This Court, therefore, concludes that the New York judgment, which the defendant Idonah Slade Perkins invokes as *res adjudicata* on the issues involved in the present case, has no binding effect in this jurisdiction and the same is not *res adjudicata* in this case, and that the prior orders and decrees of the Supreme Court of the Philippines are the only binding precedents.

This Court also holds that the New York court had no power and authority to determine the ownership of the shares of stock of the Benguet Consolidated Mining Company, because in regard to the shares of stock of a corporation, it is well-established that for the purpose of determining the law governing the ownership of such stock, it is considered immovably situated in the domicile of the corporation which created it, and in the jurisdiction of the country by virtue of the laws of which it has its being. The mere fact of the accidental presence of the certificates in question in New York gave the New York Court no jurisdiction over the shares themselves, and hence, said

Court had no more power or jurisdiction to try the title to the shares than they would have power to try the title to land outside of the State. Consequently, the New York decision purporting to adjudicate ownership of such shares to Idonah Slade Perkins is null and void and of no binding force in this jurisdiction.

Finally, the Court finds that the defendant Benguet Consolidated Mining Company has no interest in this case other than to comply with orders from this Court in respect to the 52,874 shares standing in the name of the plaintiff Eugene Arthur Perkins, and the accrued dividends on the same amounting to ₱71,379.90 which at the time of the filing of the complaint had been declared as dividends on said shares and has been withheld by it awaiting adjudication of the person entitled thereto, and likewise to pay subsequent dividends accruing thereon. The Court, moreover, finds that the cross-claims of defendant Idonah Slade Perkins against the plaintiff and the defendant Benguet Consolidated Mining Company have not been proven.

In View of the Foregoing Considerations, judgment is hereby rendered in favor of the plaintiff and against the defendants, Benquet Consolidated Mining Company and Idonah Slade Perkins, ordering, adjudging and decreeing:

(1) that the plaintiff Eugene Arthur Perkins, as the manager of the conjugal partnership between himself and the defendant Idonah Slade Perkins, is the only person entitled to the possession, control and disposal of all shares of the Benquet Consolidated Mining Company, standing in his name in the books of said defendant Company, particularly the 52,874 shares of stock heretofore mentioned, and any stock dividend declared thereon, including the right to receive the dividends heretofore declared thereon in amount of ₱71,379.90, as well as such dividends as have hereafter been declared and shall be made payable on said shares, while he holds the same;

(2) that the defendant Benguet Consolidated Mining Company recognize the ownership, title, and right of disposal of the plaintiff herein in and to the 52,874 shares of its stock, and pay him the amount of ₱71,379.90, being the dividends declared on said shares including interest thereon at the rate of 6% per annum from July 6, 1938; and pay to said plaintiff any and all dividends heretofore declared and made payable on said shares or which may hereafter be declared and made payable thereon, while he continues to hold the same; and,

(3) that the cross-claims of defendant Idonah Slade Perkins against the plaintiff and the defendant Benguet Consolidated Mining Company be dismissed, with costs against said defendant.

So Ordered.

Manila, April 23, 1947.

Rafael Dinglasan
Judge.